

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLATYPUS WEAR, INC. dba BAD BOY
BRANDS, a Nevada corporation,

Plaintiff,

v.

BAD BOYS BRANDS, LLC, a Washington
limited liability company, TREE FARM
MEDIA GROUP, LLC, a Washington limited
liability company, WILLIAM GRAHAM
HNEDAK, a Washington resident, and
JOSHUA LOPER, a Washington resident,

Defendants.

Case No. 2:15-cv-00650

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, LANHAM ACT
VIOLATIONS, STATE AND COMMON
LAW UNFAIR COMPETITION, AND
UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

For its Complaint, Platypus Wear, Inc. d/b/a Bad Boy Brands (“Bad Boy Brands” or
“Plaintiff”), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Plaintiff Platypus Wear, Inc. is a Nevada corporation with its principal place of
business located at 2411 Second Avenue, San Diego, California 92101. At all relevant times,
Platypus Wear, Inc. has done business as Bad Boy Brands.

2. Upon information and belief, Defendant Bad Boys Brands, LLC (hereafter “BBB, LLC”) is a limited liability company formed in December 2014, organized and existing under the laws of the State of Washington, and based in King County, Washington.

3. Upon information and belief, Defendant Tree Farm Media Group, LLC is a limited liability company formed in May 2014 and organized and existing under the laws of the State of Washington, with its principal place of business in Skagit County, Washington.

4. Upon information and belief, Defendant William Graham Hnedak (hereafter “Hnedak”) is an individual residing in Skagit County, Washington, the chief executive officer of Defendant BBB, LLC, the principal of Defendant Tree Farm Media Group, LLC and is doing and/or has done business as Bad Boys Brands and Bad Boys Blend. Upon information and belief, Defendant William Graham Hnedak is also known as Graham Hnedak.

5. Upon information and belief, Defendant Joshua Loper (hereafter “Loper”) is an individual residing in this district and the president of Defendant BBB, LLC.

JURISDICTION AND VENUE

6. This action arises under Section 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), as well as common law trademark infringement, state and common law unfair competition, and common law unjust enrichment.

7. This Court has subject matter jurisdiction over the federal trademark infringement and Lanham Act violations pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1332, 1338(a) and 1338(b).

8. This Court has supplemental jurisdiction over the common law trademark infringement, state and common law unfair competition, and common law unjust enrichment claims pursuant to 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over Defendants because BBB, LLC and Tree Farm Media Group, LLC are Washington limited liability companies that offer their goods and/or services for sale in this district and Hnedak and Loper are residents of the State of Washington, Defendants have committed acts of trademark infringement and unfair

1 competition in this district, and Defendants have placed infringing products into the stream of
2 commerce in this district.

3 10. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants are
4 residents of this district, and the claim arose in King County.

5 **STATEMENT OF THE CASE**

6 11. Plaintiff Bad Boy Brands has done business as Bad Boy Brands for at least ten
7 years and has owned relevant United States common law and/or statutory trademark rights in
8 the mark BAD BOY for up to approximately thirty years. Notwithstanding Plaintiff's long
9 pre-existing rights, in 2014, Defendants began offering products and/or services for sale under
10 Plaintiff's BAD BOY marks, including the very same products for which Plaintiff holds a
11 federal trademark registration. Plaintiff therefore brings this action seeking, *inter alia*, to
12 enjoin Defendants' infringement.

13 **PLAINTIFF BAD BOY BRANDS' BUSINESS AND ITS TRADEMARKS**

14 12. Bad Boy Brands has been in business since approximately 1984 and is in the
15 business of licensing the use of its intellectual property, including its BAD BOY brand, in the
16 United States and around the world.

17 13. Bad Boy Brands has licensed its BAD BOY brand throughout the world,
18 including in the United States, Canada, Mexico, Australia, Japan, China, Brazil, South Africa,
19 the United Kingdom, France, Poland, Russia, Singapore, South Korea and other countries.

20 14. Bad Boy Brands and its licensees have sold and been involved with a wide
21 range of BAD BOY branded products, including but not limited to, apparel, sporting goods,
22 athletic gear, gyms, accessories, school products, food products, beverage products and many
23 more product categories.

24 15. For approximately thirty years or more, Bad Boy Brands and/or its
25 predecessors-in-interest have been the exclusive owner of the relevant United States common
26 law and/or statutory trademark rights in the mark BAD BOY. Indeed, Bad Boy Brands is the
27

registered owner of the following United States trademark registrations with respect to the
BAD BOY word mark.¹

Mark	Reg. No.	Goods / Date of first use in commerce	Filing Date/ Registration Date
BAD BOY	2,045,529	Class 25. Men's, women's and children's clothing, namely shirts, knit tops, woven tops, pants, shorts, volleyball shorts, hats, visors, swim trunks, T-shirts, tank tops, jackets, sweatshirts, sweatpants, belts, headbands, wristbands, vests, and shoes. FIRST USE: 19820100. FIRST USE IN COMMERCE: 19830100	Filed: Sept. 18, 1995 Reg.: Mar. 18, 1997
BAD BOY	3,667,065	Class 28. Boxing gloves; fight gloves used for fighting, mixed martial arts and other combat sports; focus mitts used for training boxers, fighters, mixed martial artists and other combat athletes; training gloves used for training boxers, fighters, mixed martial artists and other combat athletes; elbow pads, knee pads, shin guards, arm guards and mouth guards all for athletic use. FIRST USE: 20081120. FIRST USE IN COMMERCE: 20081120.	Filed: Apr. 28, 2000 Reg.: Aug. 11, 2009
BAD BOY	3,702,967	Class 16: Decals; stickers. FIRST USE: 19890000. FIRST USE IN COMMERCE: 19890000.	Filed: July 24, 2008 Reg.: Oct. 27, 2009
BAD BOY	3,746,515	Class 35. Promotional services, namely, promoting and sponsoring athletes and promoting and sponsoring athletic and sporting competitions; publicity agents. FIRST USE: 19930320. FIRST USE IN COMMERCE: 19950117.	Filed: June 30, 2009 Reg.: Feb. 9, 2010

¹ Bad Boy Brands also owns numerous other BAD BOY and related design marks, not specifically detailed herein, which are relevant to Bad Boy Brands' longstanding rights with respect to the BAD BOY brand and related designs in the United States and throughout the world.

Mark	Reg. No.	Goods / Date of first use in commerce	Filing Date/ Registration Date
BAD BOY	3,865,270	Class 18: All-purpose athletic bags; back packs. FIRST USE: 19950000. FIRST USE IN COMMERCE: 19950000.	Filed: Mar. 30, 2009 Reg.: Oct. 19, 2010
BAD BOY	4,198,846	Class 09. Downloadable audio and video recordings featuring documentaries of athletes, instruction in relation to fighting and mixed martial arts, interviews with athletic trainers and coaches, and interviews with athletes and other personalities. FIRST USE: 20120412. FIRST USE IN COMMERCE: 20120412.	Filed: Aug. 31, 2009 Reg.: Aug. 28, 2012
BAD BOY	4,702,718	Class 35. Retail store services featuring apparel, footwear, headwear, equipment for various sports and games, sport bags, bags and backpacks; wholesale store services featuring apparel, footwear, headwear, equipment for various sports and games, sport bags, bags and backpacks. FIRST USE: 1995. FIRST USE IN COMMERCE: 1995.	Filed: Apr. 1, 2014 Reg.: Mar. 17, 2015

(True and correct copies of these U.S. Trademark Certificates of Registration are attached hereto, and incorporated, as **Exhibit 1**.) These U.S. registered trademarks are collectively referred to herein as the “BAD BOY Registered Trademarks.” The BAD BOY Registered Trademarks, together with other common law rights owned by Bad Boy Brands in the BAD BOY and related design marks, are sometimes collectively referred to as the “BAD BOY Trademarks.”

16. Plaintiff has been doing business under the business name Bad Boy Brands since at least 2004 and, beginning in 2004, has filed fictitious business name statements in the name of Bad Boy Brands with the county clerks for San Diego County, California and Clark County, Nevada.

1 17. Over the years, Bad Boy Brands, its predecessors-in-interest and licensees, have
2 invested substantial sums of money in the United States and around the world in building the
3 BAD BOY brand and marketing and promoting, *inter alia*, the BAD BOY Trademarks and
4 products bearing those trademarks.

5 18. As a part of the investment in marketing and promotion, Bad Boy Brands has
6 for years operated websites related to its use of the BAD BOY Trademarks,
7 www.badboybrands.com and www.badboy.com, through which goods bearing the BAD BOY
8 Trademarks are available for purchase over the Internet in the United States and elsewhere.
9 Bad Boy Brands has been operating the www.badboybrands.com and www.badboy.com
10 websites since at least 2005.

11 19. Bad Boy Brands' authorized licensees also maintain websites around the world
12 through which goods bearing the BAD BOY Trademarks are available for purchase over the
13 Internet in the United States and elsewhere.

14 20. Bad Boy Brands also has marketed and promoted products bearing its BAD
15 BOY Trademarks through social media pages, including operating Facebook and Twitter pages
16 located at <https://www.facebook.com/badboybrands> and <https://twitter.com/badboy>, since at
17 least 2010.

18 21. Through these and other longstanding marketing and promotion efforts, and
19 extensive and continuous use, Bad Boy Brands, its predecessors-in-interest and its licensees
20 have generated substantial goodwill associated with the BAD BOY Trademarks in the United
21 States and around the world.

22 22. In addition, Bad Boy Brands has vigorously policed and defended the
23 distinctiveness of the BAD BOY Trademarks, preserving the unique association between such
24 trademarks and Bad Boy Brands.

25 23. Through its efforts and those of its licensees, Bad Boy Brands is known as the
26 exclusive source of products and services legitimately bearing the BAD BOY Trademarks.
27

24. The BAD BOY Trademarks are inherently distinctive in connection with the goods and services for which Bad Boy Brands and/or its licensees use the marks in commerce. In addition, because of the extensive use and promotion of the BAD BOY Trademarks over many years in numerous channels of trade, these marks have acquired distinctiveness within the marketplace.

DEFENDANTS AND THEIR CRIMINAL BACKGROUNDS

25. Upon information and belief, Defendant Hnedak formed Defendant Tree Farm Media Group, LLC on or about April 29, 2014.

26. Upon information and belief, Defendant Hnedak is the principal of Tree Farm Media Group, LLC.

27. Upon information and belief, Defendants Hnedak and Loper, and perhaps others, formed Defendant BBB, LLC on or about December 30, 2014.

28. Upon information and belief, Defendant Hnedak is the chief executive officer of Defendant BBB, LLC.

29. Upon information and belief, Defendant Loper is the president of Defendant BBB, LLC.

30. Upon information and belief, Defendants BBB, LLC, Hnedak and Loper boast to consumers that BBB, LLC was formed and is operated by ex-convicts.

31. Upon information and belief, Defendant Loper is a convicted felon.

32. Upon information and belief, Defendant Hnedak is a convicted felon who has served prison sentences in both Washington and Tennessee.

33. Upon information and belief, Defendant Hnedak was the subject of a Problem Solver investigation by Seattle television station KOMO, and his criminal history has been the subject of multiple segments aired by KOMO.

34. Upon information and belief, numerous articles and blogs devoted to Defendant Hnedak and his criminal history are available to consumers on the Internet; among those

1 articles are articles published on the website www.komonews.com that describe Defendant
2 Hnedak as:

3 a) Someone who has “made a career out of spinning tales of trouble,
4 gaining sympathy and money and leaving a trail of victims;”

5 b) A “convicted con man” who “chooses his victims carefully, playing on
6 their sympathy before bleeding them dry;” and

7 c) Preying on “vulnerable adults,” including the disabled and the elderly.

8 35. Upon information and belief, Defendant Hnedak previously served nearly four
9 years in prison in Tennessee.

10 36. Upon information and belief, on or about April 8, 2011, Defendant Hnedak was
11 sentenced to forty-four months in state prison by the Honorable Carol Schapira, Judge of the
12 King County Superior Court.

13 37. Upon information and belief, Defendants began their unlawful and infringing
14 activities alleged herein shortly after Hnedak’s release from Washington state prison.

15 **DEFENDANTS’ UNLAWFUL AND INFRINGING ACTIVITIES**

16 38. Upon information and belief, Defendants began doing business using Bad Boy
17 Brands’ BAD BOY Trademarks, without authorization, in 2014.

18 39. Long after Bad Boy Brands first began use in commerce of the BAD BOY
19 Trademarks, and long after those marks became well known in the market place, Defendants
20 began selling, *inter alia*, apparel, including t-shirts and hoodie sweatshirts, and food and
21 beverage products, using the marks BAD BOY and BAD BOYS.

22 40. Amongst other things, Defendants have marketed and/or sold, market and/or
23 sell and/or have imminent plans to market and/or sell, *inter alia*, “Limited Edition Authentic
24 Bad Boy Shirts,” “Bad Boys Gear,” including apparel such as hoodie sweatshirts, “Bad Boys
25 Athletic Shorts,” t-shirts referred to as “Bad Boys Signature Tagline Gear,” “Bad Boys Blend
26 Coffee” and “Bad Boys Bites Healthy Snacks.”
27

41. Long after Bad Boy Brands first began use in commerce of the BAD BOY Trademarks, and long after those marks became well known in the market place, Defendant Hnedak registered the domain names www.badboysbrands.com, www.badboysblend.com, www.badboysgym.com and www.badboysathletic.com, and Defendants began offering apparel and food and beverage products using the mark BAD BOYS for sale on and/or through these websites, as well as on third party websites such as www.teespring.com.

42. Long after Bad Boy Brands first began use in commerce of the BAD BOY Trademarks, long after those marks became well in the market place and long after Bad Boy Brands began operating its website www.badboybrands.com, Defendants began operating a website at www.badboysbrands.com on which they promote Defendants Hnedak, Loper and others as “Bad Boys,” and market and promote their products bearing Bad Boy Brands’ BAD BOY Trademarks, *inter alia*, as follows:

- “[Official Gear] Unleash your inner Bad Boy ... Do it in our hoodie;”
- “We’re bringing you all of the best Bad Boys Gear™ you can get your hands on;”
- “[F]or the ultimate Bad Boy, we offer our Sexy Signature Reserve Black on Black Hoodie;”
- “Bad Boys Athletic Gear is on the way for Spring 2015;” and
- “Be the baddest thing in your gym this spring - do it in our Bad Boys Athletic Shorts.”

43. Long after Bad Boy Brands first began use in commerce of the BAD BOY Trademarks, long after those marks became well known in the marketplace and long after Bad Boy Brands began operating the Facebook page located at <https://www.facebook.com/badboybrands>, Defendants established a Facebook page located at <https://www.facebook.com/badboysbrands> in or about late 2014.

44. On the Facebook page located at <https://www.facebook.com/badboysbrands>, Defendants, *inter alia*, hold their merchandise out to consumers as the “Ultimate in Bad Boy Gear” and market and promote their products bearing Bad Boy Brands’ BAD BOY

1 Trademarks, *inter alia*, as follows:

- 2 • “Our Black on Black Signature Reserve Hoodie is the Ultimate in Bad Boy
- 3 Gear.”
- 4 • Start your day with the best gourmet coffee from your favorite Bad Boys.
- 5 • “We are all things Bad Boy. Are you?”
- 6 • “Whether you're an Authentic Bad Boy who did time, a Bad Boy at heart, or a
- 7 lover of Bad Boys, we thought it would be mighty nice to offer you a chance to
- 8 sport some Official Bad Boy Gear™ of your own.”

9 45. Long after Bad Boy Brands first began use in commerce of its BAD BOY
 10 Trademarks, and long after those marks became well known in the market place, Defendants
 11 first began marketing and/or selling or, at a minimum, making imminent plans to begin selling,
 12 *inter alia*, products and/or services using the marks BAD BOYS GYMS, BAD BOYS
 13 ATHLETIC, BAD BOYS BLEND COFFEE, BAD BOYS GEAR, BAD BOYS FARMS
 14 SALSA, BAD BOYS FARMS, BAD BOYS BITES HEALTHY SNACKS, and BAD BOYS
 15 SUPPLY.

16 46. Plaintiff Bad Boy Brands has not consented to, sponsored, endorsed, or
 17 approved Defendants’ use of the terms BAD BOY or BAD BOYS on any products or services.

18 47. Defendants’ use of the terms BAD BOY and BAD BOYS in commerce in
 19 connection with their products and/or services is likely to confuse, mislead and deceive the
 20 public as to the origin of the goods, or cause these persons to believe that the products have
 21 been sponsored, approved, authorized or licensed by Bad Boy Brands, and/or that Defendants
 22 are in some way affiliated or connected with Bad Boy Brands.

23 48. The valuable reputation of Bad Boy Brands and the goodwill in the BAD BOY
 24 brand has been and is likely to be diminished by its association with Defendants’ products,
 25 services and websites.

26 49. In addition, Defendants’ unauthorized use of Bad Boy Brands’ BAD BOY
 27 brand brings disrepute to Bad Boy Brands’ BAD BOY brand by virtue of, *inter alia*,

1 Defendants' criminal history alleged herein, including Defendant Hnedak's lengthy, serious
2 and well-publicized criminal history.

3 50. By using the terms BAD BOY and BAD BOYS, Defendants are causing a
4 likelihood of confusion. Defendants are also causing "initial interest confusion" through the
5 use of the BAD BOY and BAD BOYS terms on-line in connection with, *inter alia*, the website
6 www.badboysbrands.com and the Facebook page www.facebook.com/badboysbrands, because
7 consumers searching the Internet for Bad Boy Brands' BAD BOY brand are likely to find
8 Defendants' website and Facebook page and mistakenly believe that they are affiliated with or
9 sponsored by Bad Boy Brands.

10 51. Defendants are trading off of the goodwill in Bad Boy Brands' BAD BOY
11 brand by using the terms BAD BOY and BAD BOYS in the same marketing channels,
12 including the Internet, to offer the same goods (apparel including t-shirts and hoodie
13 sweatshirts) to the same customers (individual consumers) as those offered by Plaintiff Bad
14 Boy Brands under its BAD BOY marks.

15 52. Bad Boy Brands has requested that Defendants cease their acts of trademark
16 infringement and unfair competition, and has given Defendants actual notice of Plaintiff's
17 rights in the BAD BOY marks, but Defendants willfully refuse to cease their unlawful acts of
18 trademark infringement and unfair competition.

19 **COUNT I – TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

20 53. Bad Boy Brands incorporates and realleges herein all of the foregoing
21 paragraphs of this Complaint as if fully set forth in this paragraph.

22 54. Bad Boy Brands owns valid and enforceable federal trademark registrations for
23 the BAD BOY Registered Trademarks.

24 55. Bad Boy Brands' trademark rights in the BAD BOY Registered Trademarks are
25 senior to the alleged rights, if any, of Defendants.

26 56. Bad Boy Brands has not authorized Defendants to use the BAD BOY
27 Registered Trademarks, or any copy, colorable imitation, or confusingly similar mark.

1 57. Defendants have been, were, are and/or are making imminent plans to be, using,
2 reproducing, counterfeiting, copying and colorably imitating the BAD BOY Registered
3 Trademarks and applying such reproduction, counterfeit, copy or colorable imitations to their
4 goods and/or services, including, *inter alia*, to apparel including t-shirts, hoodie sweatshirts,
5 athletic shorts and food and beverage products intended to be used in commerce, or in
6 connection with the sale, offering for sale, and distribution of goods and/or services, including
7 in Defendants' website domain name and Facebook page.

8 58. Such reproducing, counterfeiting, copying, and colorably imitating, and/or
9 imminent plans to reproduce, counterfeit, copy and colorably imitate, by Defendants on and/or
10 in connection with goods and/or services has caused and is likely to cause or continue to cause
11 confusion, mistake and deception among the purchasing public as to source or origin.

12 59. Defendants' acts, as herein alleged, constitute infringement of Bad Boy Brands'
13 registered trademarks under 15 U.S.C. § 1114.

14 60. Defendants continue to carry out these acts of infringement with knowledge of
15 and in conscious disregard of Bad Boy Brands' prior and senior rights, and with intent to harm
16 Bad Boy Brands' goodwill in those marks, making this an exceptional case within the meaning
17 of 15 U.S.C. § 1117.

18 61. The actions of Defendants have damaged and will continue to damage Bad Boy
19 Brands' business, market, reputation and goodwill, and may discourage current and potential
20 customers from dealing with Bad Boy Brands. Such irreparable damage will continue unless
21 the acts of Defendants are enjoined.

22 62. As a direct and proximate result of the infringing actions of Defendants, Bad
23 Boy Brands has suffered damages in an amount that will be shown at trial, including by
24 reference to the amount of revenues that Defendants have generated through sales of BAD
25 BOY(S) branded products and/or any other appropriate evidence.

26 63. Bad Boy Brands is entitled to receive a disgorgement of Defendants' profits
27 flowing from their unauthorized use of the confusingly similar marks in connection with, *inter*

1 *alia*, the sale and/or offering for sale of apparel, food and beverage products and related goods
2 and/or services.

3 64. Based on the willful conduct of Defendants in connection with their infringing
4 use of the BAD BOY Registered Trademarks, Bad Boy Brands is entitled to recover treble
5 damages, prejudgment interest, and an award of its attorneys' fees and costs.

6 65. In the alternative, Plaintiff may elect to recover statutory damages pursuant to
7 15 U.S.C. § 1117(c).

8 66. Bad Boy Brands has been, is and will continue to be, damaged by Defendants'
9 willful trademark infringement in a manner and amount that cannot be fully measured or
10 compensated in economic terms, for which there is no adequate remedy at law.

11 67. Bad Boy Brands has suffered and is suffering irreparable harm as a result of the
12 knowing and willful infringement by Defendants, and Bad Boy Brands is entitled to
13 preliminary and permanent injunctive relief barring Defendants from using any mark that is
14 confusingly similar to the BAD BOY Registered Trademarks. Bad Boy Brands is also entitled
15 to seizure and destruction of the infringing goods.

16 **COUNT II – FEDERAL UNFAIR COMPETITION**
17 **UNDER LANHAM ACT § 43, 15 U.S.C. § 1125(a)**

18 68. Bad Boy Brands incorporates and realleges herein all of the foregoing
19 paragraphs of this Complaint as if fully set forth in this paragraph.

20 69. Bad Boy Brands' BAD BOY Trademarks have become uniquely and
21 distinctively associated with Bad Boy Brands as the source or origin of high quality products
22 sold or licensed by Bad Boy Brands.

23 70. Defendants' use of, and/or imminent plans to use, the marks BAD BOY and
24 BAD BOYS, and other confusingly similar marks, in connection with retail sales of apparel,
25 food and beverage products and related goods and/or services, including in their website
26 domain names and Facebook page, is likely to cause confusion, mistake, or deception among
27 the purchasing public as to the affiliation, connection or association between Bad Boy Brands

1 and Defendants with respect to such retail sales. Such conduct constitutes a false designation
2 of origin in violation of the federal Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

3 71. Upon information and belief, the false designation of origin by Defendants is
4 and has been knowing, intentional, and in bad faith.

5 72. As a direct and proximate result of the actions of Defendants, Bad Boy Brands
6 has suffered damages in an amount that will be shown at trial.

7 73. As a direct and proximate result of Defendants' willful and deliberate conduct,
8 Bad Boy Brands has suffered, and will continue to suffer, substantial injuries, loss, and damage
9 to its business and goodwill in an amount to be proven at trial.

10 74. Bad Boy Brands' injuries from the knowing and willful false designation of
11 origin by Defendants cannot be adequately remedied with money damages.

12 75. Bad Boy Brands has suffered and is suffering irreparable harm as a result of the
13 knowing and willful unfair competition by Defendants. Monetary damages alone cannot
14 compensate Bad Boy Brands for the detrimental and unreasonable harm that Defendants have
15 and will continue to cause to Bad Boy Brands. For these reasons, Bad Boy Brands seeks, and
16 is entitled to, preliminary and permanent injunctive relief prohibiting Defendants from using
17 confusingly similar terms in connection with their products and services. Bad Boy Brands is
18 also entitled to seizure and destruction of the infringing goods.

19 76. As a direct and proximate result of the actions of Defendants, Bad Boy Brands
20 is entitled to receive a disgorgement of their profits flowing from their unauthorized use of
21 copies or colorable imitations of the BAD BOY Trademarks, or any confusingly similar marks.

22 77. Based on the willful conduct of Defendants, Bad Boy Brands is entitled to
23 recover an award of treble damages, prejudgment interest, and its attorneys' fees and costs.

24 **COUNT III – COMMON LAW TRADEMARK INFRINGEMENT**

25 78. Bad Boy Brands incorporates and realleges herein all of the foregoing
26 paragraphs of this Complaint as if fully set forth in this paragraph.

1 79. Through Bad Boy Brands' extensive and continuous use and promotion of the
2 BAD BOY Trademarks, Bad Boy Brands has established and acquired protectable and
3 proprietary trademark rights under the common law for its BAD BOY Trademarks.

4 80. Bad Boy Brands' BAD BOY Trademarks are inherently distinctive and have
5 acquired strong distinctive designation for Bad Boy Brands' and its licensees' goods and
6 services.

7 81. Bad Boy Brands has not authorized Defendants to use any marks that are
8 confusingly similar to the BAD BOY Trademarks.

9 82. Defendants have used, were using, are using and/or have imminent plans to use,
10 in interstate commerce, the marks BAD BOY and BAD BOYS in connection with products
11 and/or services, and in particular, in connection with retail sales of products including apparel,
12 food and beverage products, and related goods and/or services, including in their website
13 domain names and Facebook page.

14 83. Such use by Defendants of the marks BAD BOY and BAD BOYS in
15 connection with retail sales of such products and/or services has caused and is likely to cause
16 or continue to cause confusion, mistake and deception among the purchasing public as to
17 source or origin. Such conduct constitutes trademark infringement in violation of Bad Boy
18 Brands' common law rights.

19 84. Upon information and belief, the use by Defendants, and/or their imminent plan
20 to use, the infringing mark in connection with retail sales of products and/or services,
21 including, *inter alia*, apparel, food and beverage products and related goods and/or services,
22 including in their website domain names and Facebook page, has been with knowledge of Bad
23 Boy Brands' prior and senior rights in the BAD BOY Trademarks and with an intent to harm
24 Bad Boy Brands' goodwill in those marks.

25 85. By virtue of Defendants using the terms BAD BOY and BAD BOYS in
26 connection with their products and/or services, Bad Boy Brands has suffered and will continue
27 to suffer great damage to its business, goodwill, and reputation.

1 86. Defendants' use of the terms BAD BOY and BAD BOYS in connection with
2 their products and services has irreparably harmed and will continue to irreparably harm Bad
3 Boy Brands.

4 87. Defendants continue to carry out their acts of infringement in conscious
5 disregard of Bad Boy Brands' rights.

6 88. If Defendants are permitted to continue their willful and deliberate acts of
7 infringement, Bad Boy Brands will continue to be irreparably harmed. Monetary damages
8 alone cannot compensate Bad Boy Brands for the harm that Defendants have and will continue
9 to cause to Bad Boy Brands. For these reasons, Bad Boy Brands seeks and is entitled to
10 preliminary and permanent injunctive relief prohibiting Defendants from using confusingly
11 similar terms in connection with their products and/or services.

12 89. As a direct and proximate result of the infringing actions of Defendants, Bad
13 Boy Brands has suffered damages in an amount that will be shown at trial.

14 90. As a direct and proximate result of the infringing actions of Defendants, Bad
15 Boy Brands is entitled to receive a disgorgement of Defendants' profits flowing from their
16 unauthorized use of the confusingly similar mark in connection with their retail sales of
17 products and/or services including, *inter alia*, apparel, food and beverage products and related
18 goods and/or services.

19 91. The above-described conduct of Defendants was oppressive, malicious and
20 fraudulent and in conscious disregard for Bad Boy Brands' rights. Defendants are therefore
21 liable for exemplary and punitive damages.

22 92. Bad Boy Brands' injuries from the knowing, willful and malicious infringement
23 by Defendants of Bad Boy Brands' rights in the BAD BOY Trademarks cannot be adequately
24 remedied with money damages.

25 93. Bad Boy Brands has suffered and is suffering irreparable harm as a result of the
26 knowing, willful and malicious infringement by Defendants, and Bad Boy Brands is entitled to
27 preliminary and permanent injunctive relief barring Defendants from using any mark that is

1 confusingly similar to the BAD BOY Trademarks. Bad Boy Brands is also entitled to seizure
2 and destruction of the infringing goods.

3 **COUNT IV – UNFAIR COMPETITION AND UNFAIR**
4 **BUSINESS PRACTICES UNDER RCW 19.86.020**

5 94. Bad Boy Brands incorporates and realleges herein all of the foregoing
6 paragraphs of this Complaint as if fully set forth in this paragraph.

7 95. Defendants activities identified herein constitute an unfair method of
8 competition in business and an unfair trade practice in business, which is damaging to the
9 public interest, in violation of Washington Consumer Protection Act, RCW 19.86.020.

10 96. Defendants' use of the terms BAD BOY and BAD BOYS, which mimic and
11 infringe upon Bad Boy Brands' trademarks, has been and is knowingly, willfully, and
12 deliberately a fraudulent representation.

13 97. As a direct and proximate result of the knowing, willful and deliberate conduct
14 of Defendants, Bad Boy Brands has suffered and will continue to suffer, substantial injuries,
15 loss, and damages to its business and goodwill in an amount to be proven at trial.

16 98. If Defendants are permitted to continue their willful and deliberate acts of
17 infringement, Bad Boy Brands will continue to be irreparably harmed. Monetary damages
18 alone cannot compensate Bad Boy Brands for the harm that Defendants have and will continue
19 to cause. For these reasons, Bad Boy Brands seeks and is entitled to preliminary and
20 permanent injunctive relief prohibiting Defendants from using confusingly similar terms in
21 connection with its products and/or services, and to recover treble damages and attorneys' fees.

22 **COUNT V – COMMON LAW UNFAIR COMPETITION**

23 99. Bad Boy Brands incorporates and realleges herein all of the foregoing
24 paragraphs of this Complaint as if fully set forth in this paragraph.

25 100. Notwithstanding Bad Boy Brands' long-established and prior common law and
26 statutory rights in the BAD BOY Trademarks, Defendants have used, reproduced, copied, or
27 colorably imitated, and/or have imminent plans to use reproduce, copy, or colorably imitate,

1 the BAD BOY Trademarks without Bad Boy Brands' consent, in connection with retail sales
2 of, *inter alia*, apparel, food and beverage products and related goods and/or services, including
3 in their website domain names and Facebook page, in a manner which is likely to cause
4 confusion, mistake or deception among the purchasing public as to source or origin.
5 Defendants' conduct constitutes unfair competition in violation of the common law.

6 101. Upon information and belief the unfair competition by Defendants is and has
7 been knowing, intentional and in bad faith.

8 102. As a direct and proximate result of the unauthorized and confusing use and/or
9 imminently planned use by Defendants of the BAD BOY mark, and confusingly similar marks,
10 in connection with retail sales of, *inter alia*, apparel, food and beverage products and related
11 goods and/or services, Bad Boy Brands has suffered damages in an amount that will be shown
12 at trial.

13 103. Based on Defendants' willful and malicious conduct, Bad Boy Brands is
14 entitled to an award of prejudgment interest and its attorneys' fees and costs.

15 104. Bad Boy Brands' injuries from the knowing, willful and malicious unfair
16 competition by Defendants cannot be adequately remedied with monetary damages.

17 105. Bad Boy Brands has suffered and is suffering irreparable harm as a result of the
18 knowing, willful and malicious unfair competition by Defendants, and Bad Boy Brands is
19 entitled to permanent injunctive relief barring Defendants from unfairly competing with Bad
20 Boy Brands.

21 **COUNT VI – COMMON LAW UNJUST ENRICHMENT**

22 106. Bad Boy Brands incorporates and realleges herein all of the foregoing
23 paragraphs of this Complaint as if fully set forth in this paragraph.

24 107. Defendants have benefited by using the terms BAD BOY and BAD BOYS in
25 connection with selling products and/or providing services.

26 108. This benefit has been conferred on Defendants at the expense of Plaintiff Bad
27 Boy Brands.

1 109. Defendants are aware of the benefit that has been conferred upon them.

2 110. Under the circumstances, Defendants' retention of this benefit at the expense of
3 Bad Boy Brands is inequitable.

4 111. By using the terms BAD BOY and BAD BOYS in connection with their
5 products and services, Defendants have been unjustly enriched at the expense and to the
6 detriment of Plaintiff Bad Boy Brands.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff Bad Boy Brands prays for entry of judgment in its favor and
9 against Defendants as follows:

10 A. A preliminary and permanent injunction restraining and enjoining Defendants,
11 and all of their officers, employees, agents, representatives, successors, subsidiaries, parents,
12 affiliates and assigns, and all persons in active concert or participation with any of them, from
13 using the terms "BAD BOY," "BAD BOYS," or any other term or name, alone or in
14 combination with other words or symbols, which is confusingly similar to the BAD BOY
15 mark, or which is likely to cause confusion or mistake or to deceive, including any use on the
16 Defendants' websites and on the Internet;

17 B. A preliminary and permanent injunction restraining and enjoining Defendants,
18 and all of their officers, employees, agents, representatives, successors, subsidiaries, parents,
19 affiliates and assigns, and all persons in active concert or participation with any of them, from
20 seeking federal registration of the terms "BAD BOY" or "BAD BOYS," alone or in
21 combination with any other words or symbols, which is confusingly similar to the BAD BOY
22 mark, or which is likely to cause confusion or mistake or to deceive;

23 C. An order requiring Defendants to deliver to Bad Boy Brands all products,
24 labels, marketing, promotional and other materials in their possession, custody, or control
25 bearing the terms "BAD BOY" or "BAD BOYS," or any other term or name, alone or in
26 combination with other words or symbols, which is confusingly similar to the BAD BOY
27 mark, or which is likely to cause confusion or mistake or to deceive;

1 D. An order requiring Defendants to discontinue use of the terms “BAD BOY” or
2 “BAD BOYS” on and in connection with any website, including the websites located at
3 www.badboysbrands.com, www.badboysblend.com, www.badboysathletic.com and
4 www.badboysgym.com, and requiring Defendants to transfer the aforementioned domain
5 names to Bad Boy Brands;

6 E. An order requiring Defendants to file with this Court and serve upon Bad Boy
7 Brands within thirty (30) days after the entry of the permanent injunction(s) a report, in writing
8 and under oath, setting forth in detail the manner and form in which they have complied with
9 the injunction(s);

10 F. That Defendants be required to pay Bad Boy Brands such damages as Bad Boy
11 Brands has sustained, or will sustain, in consequence of Defendants’ false description and
12 representation, false designation of origin, unfair competition and trademark infringement, and
13 to account for all gains, profits, and advantages derived by Defendants that are attributable to
14 such unlawful acts; and that such damages be trebled against Defendants, as provided by 15
15 U.S.C. § 1117, RCW 19.86.090, and as otherwise authorized;

16 G. In lieu of actual damages and profits under 15 U.S.C. § 1117(a), should Plaintiff
17 so elect, an award of statutory damages against each Defendant, to be increased to the
18 maximum permitted by law, for their acts of willful infringement;

19 H. That the Court adjudge this to be an exceptional case and require Defendants to
20 pay over to Plaintiff the costs of this action, including reasonable attorneys’ fees and interest,
21 and treble damages, as provided by 15 U.S.C. § 1117, RCW 19.86.090, and as otherwise
22 authorized;

23 I. That Defendants be ordered to pay Plaintiff prejudgment and post-judgment
24 interest on all sums allowed by law; and

25 J. An award to Bad Boy Brands of such other and further relief as this Court shall
26 deem just.
27

JURY DEMAND

Bad Boy Brands hereby demands a trial by jury on all issues so triable.

DATED this 27th day of April, 2015.

ROHDE & VAN KAMPEN PLLC

s/ Al Van Kampen

Al Van Kampen, WSBA No. 13670

avk@rvk-law.com

David E. Crowe, WSBA No. 43529

DCrowe@rvk-law.com

Attorneys for Plaintiff Platypus Wear, Inc. dba
Bad Boy Brands

Of Counsel:

Karen B. King, Esq.

2411 Second Avenue

San Diego, California 92101

(619) 525-2270

kking@badboy.com